

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

David B. Thompson,

Case No. 4:18cv2103

Petitioner,

-vs-

JUDGE PAMELA A. BARKER

Magistrate Judge George Limbert

Warden Brandeshawn Harris,

Respondent

ORDER

Currently pending is Petitioner David B. Thompson's (1) "Application for Default Judgment in Writ of Habeas Corpus Petition under 28 U.S.C. § 2254" (Doc. No. 11); and (2) "Motion to Strike Magistrate Judge Report & Recommendation due to Untimeliness pursuant to Local Rule 16.3.1(h)(1)" (Doc. No. 14.) For the following reasons, Petitioner's Application and Motion are DENIED.

In his Application for Default Judgment, Petitioner argues that "Respondent failed to answer and reply with any valid arguments." (Doc. No. 11.) Petitioner's Application is denied. The record reflects that Petitioner filed his Petition for Writ of Habeas Corpus on September 13, 2018. Respondent was granted an extension until April 19, 2019 to file a response to the Petition, after which Respondent timely filed his Return of Writ, as well as a transcript containing the state court record. (Doc. No. 9.) Thus, Respondent did not fail to timely answer the Petition, and default judgment is unwarranted.

In his Motion to Strike, Petitioner argues that the Amended Report & Recommendation filed by Magistrate Judge George Limbert on April 17, 2020 should be stricken as untimely. (Doc. No. 14.) Petitioner asserts that, pursuant to Local Rule 16.3.1(h)(1), the Report & Recommendation was

due by no later than January 26, 2020; i.e., 285 days after the filing of the Return of Writ. (*Id.* at p. 1.) Petitioner also raises numerous arguments in support of his assertion that the state trial court erred in his underlying criminal proceedings. (*Id.* at pp. 2-4.)

Petitioner's Motion to Strike (Doc. No. 14) is denied. Local Rule 16.3.1(h)(1) relates to "Review of Decisions by the Commissioner of Social Security," and sets forth a timeline for the issuance of Reports & Recommendations in social security cases. This Rule does not apply to habeas petitions and, thus, is inapplicable to the Amended Report & Recommendation ("R&R") in the instant case. Thus, the Court finds that the Amended R&R (Doc. No. 13) is not untimely and Petitioner's Motion to Strike is without merit and denied.

The Court notes that it will address the substantive arguments raised in Petitioner's Motion regarding his underlying state court conviction and sentence, in connection with its review of the Magistrate Judge's Amended R&R. If Petitioner wishes to file formal "Objections" to the Amended R&R, he must do so by no later than 14 days from the date of this Order; i.e., by no later than August 12, 2020.

Accordingly, and for all the reasons set forth above, Petitioner's Application for Default Judgment (Doc. No. 11) and Motion to Strike the Magistrate Judge's Amended Report & Recommendation (Doc. No. 14) are DENIED.

IT IS SO ORDERED.

Date: July 29, 2020

s/Pamela A. Barker
PAMELA A. BARKER
U. S. DISTRICT JUDGE